bears. *Held*, that the rule imposing absolute liability on the keeper of animals *ferae naturae* does not apply to the defendant. *Molloy* v. *Starin*, 191 N. Y. 21.

If carriers were required to receive dangerous animals, they should not be under absolute liability for damage, since it seems unjust to impose an insurer's duty upon one who must assume a burden already perilous. *Cf. Jackson* v. *Baker*, 24 D. C. App. Cas. 100. It is settled, however, that carriers may refuse to accept freight of a dangerous character. *Cal. Powder Works* v. *A. & P. R. R. Co.*, 113 Cal. 329. The transportation of animals *ferae naturae* and of explosives is often necessary, and imposing absolute liability would act as an undesirable deterrent on carriers. Responsibility irrespective of negligence seems to have been imposed originally from a feeling that the keeping of such things was improper and was in itself an offense. *Muller* v. *McKesson*, 73 N. Y. 195. Mere temporary possession was sufficient, and carriers or bailees for any purpose have been charged regardless of caution. *Marsel* v. *Bowman*, 62 Ia. 57; *The Lord Derby*, 17 Fed. 265. The reasoning of the present decision, however, would relieve from liability many keepers for limited purposes, and in this seems justifiable; for public opinion no longer requires discrimination against keepers of ferocious beasts. *Cf. Marquet* v. *LaDuke*, 96 Mich. 596. Furthermore the result accords with the trend of modern American authority to do away with absolute liability in the use of land and of explosives. *Brown* v. *Collins*, 53 N. H. 442; *Sowers* v. *McManus*, 214 Pa. St. 244.

CARRIERS — DISCRIMINATION — DISTRIBUTION OF CARS. — In computing the distribution of its cars in a time of shortage, the defendant railroad failed to count the fuel cars sent to certain mines by foreign railroads to be filled for them. *Held*, that such fuel cars must be counted in determining the quota to be allotted each shipper. *R. R. Com. of Ohio* v. *The Hocking Valley Ry. Co.*, 12 Interst. C. Rep. 466.

Under the Interstate Commerce Act coal carriers must distribute their cars in proportion to the capacity of the mines of the district. *United States* v. *W. Va. Northern R. Co.*, 125 Fed 252; 25 STAT. AT L. 855. The method by which such quotas should be determined was considered in two recent cases. *United States* v. *B. & O. R. Co.*, 154 Fed. 108; *Logan Coal Co.* v. *Penn. R. Co.*, 154 Fed. 497. In both it was held that cars provided by a shipper should be counted as part of such shipper's quota, on the ground that the transportation of such cars occupied the railroad to the detriment of other shippers. Since it is the duty of the carrier to furnish vehicles of transportation, it is bound to subject a shipper who does not supply vehicles to no disadvantage. *Rice, Robinson and Winthrop* v. *Western N. Y. & P. R. Co.*, 3 Interst. C. Rep. 162. In one case the principle was not applied to foreign fuel cars. *United States* v. *B. & O. R. Co.*, *supra*. But the other case supports the present ruling. *Logan Coal Co.* v. *Penn. R. Co.*, *supra*. It is difficult to see any ground for making a distinction between the fuel cars and the individual cars. Under any other rule than that of the present case the carrier would be discriminating in favor of the mines to which fuel cars were sent.

CARRIERS — LIMITATION OF LIABILITY — BREACH OF CONDITION PRECEDENT AS AFFECTING EXEMPTION. — A ship having collided while docking, water entered and damaged the cargo between decks, and then, owing to a defect in the ship, continued into the hold and there damaged other goods. The charter-party exempted the owner from liability for accidents in docking. *Held*, that the charterer may recover only the damage due to the unseaworthiness. *The Europa*, [1908] P. 84.

This decision appears to go on the ground that the charterer having received substantial performance can now no longer treat the unseaworthiness as a breach of condition precedent. The court distinguishes a recent English case in which deviation, though assumed not to be the cause of the damage, was held to be such a breach of condition precedent as to deprive the shipowners of the contract exemption from liability. *Thorley, Ltd.* v. *Orchis S. S. Co., Ltd.*, [1907] 1 K. B. 660; see 20 HARV. L. REV. 325. But in that case the deviation

was in fact a possible cause of the damage. It has not therefore yet been held that breach of a condition precedent avoids the express limitations of liability, when the damage would have occurred if the condition had not been broken.

CHATTEL MORTGAGES — AFTER ACQUIRED PROPERTY — RIGHT TO OFFSPRING OF MORTGAGED ANIMALS. — The plaintiff claimed that a chattel mortgage of certain cows included the calves in gestation at the time the mortgage was executed, there being no reference in the mortgage to the increase. *Held*, that the mortgage gives only a lien, which does not attach to the calves. *Demers* v. *Graham*, 93 Pac. 268 (Mont.).

The general rule is that a chattel mortgagee has title, and so a mortgage on animals covers the increase, though not mentioned in the mortgage, on the principle *partus sequitur ventrem*. See 16 HARV. L. REV. 442. This rule weakens the effect of the recording laws, since an examination of the mortgage gives no actual notice of its extent. But in the few states where by statute or decision a chattel mortgage gives only a lien, it is often possible to change a result based on the mortgagee's title. Thus, contrary to the result in states passing title to the mortgagee, a tender of the amount due on a note, though made after maturity, discharges the lien on the chattel mortgage security. *Moore* v. *Norman*, 43 Minn. 428; *cf. Noyes* v. *Wyckoff*, 30 Hun (N. Y.) 466. So too the court is free to construe the lien as limited to the property actually described. The contrary view is a possible construction. *First Nat'l Bank* v. *Western Mtge., etc., Co.*, 86 Tex. 636. Thus a pledge is said to cover the increase. See JONES, PLEDGES, § 32. The view of the present case, however, is preferable, as it carries out the spirit of the registry laws. *Shoobert* v. *De Motta*, 112 Cal. 215.

CONFLICT OF LAWS — LEGITIMACY AND ADOPTION — LEGITIMATION SUBSEQUENT TO BIRTH. — A New York man deserted his wife and purported to marry a New Jersey woman, who bore him two children. Thereafter he became domiciled with his family in Michigan, obtained a divorce there from his New York wife by default without personal service, and went through a second marriage ceremony with the New Jersey woman. This divorce and remarriage a New York court by decree refused to recognize. By Michigan law illegitimate children become legitimate by the subsequent marriage of their parents. The children claimed New York realty under a devise as the "lawful issue" of their father. *Held*, that they are not entitled to the property. *Olmsted* v. *Olmsted*, 190 N. Y. 458.

For a criticism of this case in the lower court, see 20 HARV. L. REV. 400.

CONSIDERATION — THEORIES OF CONSIDERATION — ACCORD AND SATISFACTION BY PART PAYMENT. — The plaintiff in a suit for the balance of a note admitted that several partial payments had been made by the defendant. It was inferable that the defendant was insolvent when the last partial payment was made, and possible that she had consented to the sale of certain land. *Held*, that it was error to charge that an agreement to accept the payments in full satisfaction is no defense. *Frye* v. *Hubbell*, 68 Atl. 325 (N. H.).

Although this case may not squarely involve the doctrine formerly established in New Hampshire that an accord and satisfaction by payment of less than the whole debt is not valid, yet it is certainly intended to annul that doctrine and does not rest on any exception to be made on account of the insolvency of the debtor. Reliance is placed upon the general reluctant expressions of assent to the overruled doctrine and upon the argument of Professor Ames that it is unjust and arose in England through a misunderstanding. See *Foakes* v. *Beer*, 9 App Cas. 605; 12 HARV. L. REV. 515; 13 *ibid.* 29. The various views of the nature of consideration are discussed in 8 HARV. L. REV. 27; 14 *ibid.* 496; 17 *ibid.* 71.

CONSTITUTIONAL LAW — CLASS LEGISLATION — ACT ALLOWING PRIVATE CLAIM AGAINST STATE. — Article III, § 19, of the Constitution of New York provides that the legislature shall not "allow any private claim against the